UNITED NATIONS

CCPR

International covenant on civil and political rights

Distr.
GENERAL

CCPR/C/28/Add.17
2 March 1995

ENGLISH
Original: ARABIC

HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Second periodic reports of States parties due in 1984

Addendum

LIBYAN ARAB JAMAHIRIYA 1/

[10 October 1994]

1. This supplement to the second report of the Socialist People's Libyan Arab Jamahiriya, which was considered by the Human Rights Committee at its forty-ninth session on 26 October 1993, contains replies to the list of written and verbal questions raised by the Committee. The Socialist People's Libyan Arab Jamahiriya hopes that this supplementary report will answer the Committee's questions and inquiries.

1/ This document contains information submitted by the Government of the Libyan Arab Jamahiriya to supplement its second periodic report (document CCPR/C/28/Add.16).

Part One

QUESTIONS SUBMITTED IN WRITING IN ADVANCE OF THE CONSIDERATION OF THE SECOND PERIODIC REPORT

I. Constitutional and legal framework within which the Covenant is implemented and state of emergency (arts. 2 (2), (3), and 4)

Question (a)

Please clarify the status of the Covenant in the Libyan Arab Jamahiriya, particularly whether individuals can invoke the provisions of the Covenant directly before the courts. How can a conflict that may arise between the Covenant and domestic law be resolved?

Reply

2. Every international convention that is ratified by the Basic People's Congresses under the terms of legislation enacted in the Jamahiriya or to which the Jamahiriya accedes, such as the Covenant, acquires binding force and its legal status takes precedence over that of the provisions of domestic law. In the event of conflict between the provisions of domestic legislation and those of a convention to which the Jamahiriya is a party, the latter provisions take precedence over Libyan law or legislation. In accordance with this principle, the International Covenant on Civil and Political Rights is binding on the courts and any interested party is entitled to invoke its provisions before the Libyan judiciary, which is obliged to rule on any such petition in such a way as to ensure the application of the provisions of the Covenant, provided that the petition is legally substantiated and that its presentation to the courts is in the public interest. This is due to the fact that the Jamahiriya acceded to the Covenant on 15 May 1970 and put it into effect in 1976, as a result of which it became part of the country's domestic law and its provisions became binding on all. Individuals are entitled to invoke it before official bodies, including the courts and the prosecuting authorities.

Question (b)

Please provide detailed information on the steps taken by the Libyan Arab Jamahiriya following its accession to the Covenant to review its legislation and comment on the matters covered.

Reply

3. As already indicated in the Jamahiriya's second report submitted to the Committee in 1993, on its accession to the Covenant, the Jamahiriya conducted a review of its legislation and found it to be consistent, in most cases, with the letter and the spirit of the Covenant.

Question (c)

Please comment on the legal status of the "Great Green Document on Human Rights in the Age of the Masses", with specific reference to its relation to the Constitution.

Reply

4. The Great Green Document on Human Rights in the Age of the Masses contains a set of legal principles that should serve as guidelines during any review of legislation. That Document lacked legal force until the promulgation of Act No. 5 of 1991, concerning the application of the principles of the Great Green Document on Human Rights in the Age of the Masses, article 1 of which stipulated that: "The legislation in force prior to the promulgation of the Green Document shall be amended to make it consistent with the principles set forth in that Document. It shall not be permissible to promulgate legislation that is incompatible with those principles". Accordingly, it can be said that the Great Green Document on Human Rights in the Age of the Masses has legal force in regard to legislation promulgated subsequent or prior to Act No. 5 of 1991.

Question (d)

Please clarify the relationship between the Libyan Arab Committee on Human Rights in the Age of the Masses and the ordinary courts in so far as the implementation of the Covenant is concerned.

Reply

5. The Libyan Arab Committee on Human Rights is a non-governmental organization that receives complaints and grievances from individuals in Libya and follows them up with the bodies accused of violating human rights. It also follows them up with judicial and official bodies. If these bodies take no legal action to remedy the injustice, the Committee exposes those violations through the various information media, since one of the principal objectives of the Committee, as specified in its Statutes, is to oppose and condemn violations of human rights and fundamental freedoms.

Question (e)

Please provide details of the activities being undertaken in the Libyan Arab Jamahiriya to promote awareness of the provisions of the Covenant, particularly in the judiciary, the legal profession and the police.

Reply

6. International law and the principles and purposes of international organizations, including the United Nations and its various organs and agencies, are taught at faculties of law and police academies in the Jamahiriya. Accordingly, members of the judiciary, police officers, lawyers, all persons working in the legal profession and other highly qualified persons are fully familiar with the provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Questions (f) and (g)

Has there been any proclamation of a state of emergency in the Libyan Arab Jamahiriya since the consideration of the initial report? If so, what rights have been derogated from during such period?

Please provide further information on safeguards and effective remedies available to individuals during a state of emergency and describe the constitutional or statutory basis for ensuring conformity with article 4 (2) of the Covenant.

Reply

7. From the date of independence until the preparation of this report, a state of emergency has been proclaimed only twice. The first time was in 1956 in the wake of the tripartite aggression against Egypt by France, Great Britain and Israel. The second time was on 5 June 1967 following the Israeli aggression against Egypt.

8. Article 4 of the Legislative Decree concerning States of Emergency, which was promulgated on 5 October 1955, stipulated that, within the limits of the requirements announced to deal with the state of emergency, the Executive Council, in its capacity as the executive authority, would be empowered to take any or all of the following measures:

(a) Temporarily suspend the issue or validity of any or all permits for firearms and all or any specific types of weapons, ammunition or explosives or place them under government control or supervision, and demand information concerning the whereabouts of such weapons, ammunition and explosives;

(b) Restrict public gatherings by making them subject to authorization by the authority designated by the Executive Council. If there are strong indications that a disturbance is likely to occur as a result of the gathering, the police shall be empowered to disperse it;

(c) Prevent newspapers and publications from publishing material likely to lead to an aggravation or deterioration of the situation that necessitated the proclamation of a state of emergency. If newspapers and publications publish any such material, all copies thereof may be seized;

(d) Impose censorship on postal, telegraphic and telecommunications;

(e) Limit the opening times of public establishments and restrict movement during particular periods;

(f) If necessary, seize any means of transport or any supply commodity or other material, and order individuals to perform essential services, subject to payment of equitable compensation. The Executive Council, in its capacity as the executive authority, shall designate the body empowered to order such seizure or performance, as well as the conditions thereof and the method to be applied for the assessment of compensation;

(g) Restrict, for a period not exceeding one month, the places of residence of persons who pose an evident threat to public security and, if necessary, relocate them to other areas within the province.

9. Individuals enjoy all the safeguards and rights other than those restricted, under the terms of the Decree, during a state of emergency.

Question (h)

Please describe any factors and difficulties affecting the implementation of the Covenant, particularly the influence of culture and traditions in the Jamahiriya on the implementation of the human rights embodied in the Covenant.

Reply

10. As already indicated, following the country's accession to the Covenant, Libyan legislation was reviewed and found to be consistent with the letter and spirit of the Covenant. Accordingly, it can be said that there are no difficulties affecting the implementation of the Covenant with the exception of the application of the provisions of the Islamic Shari'a concerning penalties, women's rights and inheritance. These matters, in which there is conflict with the provisions of the Covenant, fall within the sphere of public policy in the Jamahiriya since they are sacrosanct religious principles on which the Jamahiriya cannot amend its legislation to bring it into conformity with the provisions of the Covenant.

II. The right to life, treatment of prisoners and other detainees and liberty and security of person (arts. 6, 7, 9 and 10)

Question (a)

Please enumerate the offences which are punishable by the death penalty.

Reply

11. Under the Libyan Penal Code, the following offences are punishable by death:

(a) Major offences prejudicial to the external integrity of the State;

(b) Offences prejudicial to the internal security of the State;

(c) Major offences against heads of foreign States;

(d) Some economic offences;

(e) Offences detrimental to public safety;

(f) Offences committed against individuals;

(g) Under the terms of the Narcotic Drugs Act, the death penalty may be imposed for the wilful murder of any public servant or official responsible for the implementation of the Narcotic Drugs Act during or as a result of his performance of his duty.

12. The People's Congresses have adopted an explanatory note containing the following clarifications:

(a) Legislation concerning the death penalty must be derived from the Holy Qur'an, which is the social code;

(b) The death penalty is applicable in cases involving conspiracy against the Revolution of 1 September, its achievements and the people's authority;

(c) The death penalty is applicable in cases involving wilful murder.

13. That note clearly shows that the People's Congresses, in their capacity as the legislative authority, have a tendency to restrict the applicability of the death penalty to a limited number of offences. However, the question of the abolition of the death penalty has not yet been settled.

Question (b)

What are the rules and regulations governing the use of weapons by the police and security forces? Have there been any violations of these rules and regulations and, if so, what measures, if any, have been taken to prevent their recurrence?

Reply

14. Article 13 of the Security and Police Act No. 10 of 1993 specifies the cases in which weapons may be used. It stipulates that a police officer may use force, but not a weapon, to the extent needed for the performance of his duty, provided that it is the only way to achieve that purpose. The use of weapons is restricted to the following cases:

(a) The arrest of any person sentenced to a criminal penalty or to a term of more than three months' imprisonment if the said person offers resistance or attempts to escape;

(b) The arrest of any person accused of a felony or caught in flagrante delicto while committing a misdemeanour for which he can be arrested, if the said person offers resistance or attempts to escape;

(c) The arrest of any suspect against whom an arrest warrant has been issued, if the said person offers resistance or attempts to escape;

(d) The apprehension of any prisoner attempting to escape, and while guarding prisoners if they make such an attempt, under the circumstances and conditions specified in the Prisons Act;

(e) The dispersal of a gathering of five or more persons if it endangers public security.

15. In all the above cases, care must be taken to ensure that weapons are fired only if this is the only way to achieve the aforementioned purposes. A decree promulgated by the General People's Committee for Justice designated the authorities empowered to authorize the use of firearms. It also specified the procedures to be followed in all cases, as well as the manner in which a warning should be given before shots are fired.

16. The use of firearms is also permitted in cases of self-defence and resistance against armed aggression.

Question (c)

What concrete measures have been taken by the authorities to ensure the strictest observance of article 7 of the Covenant? Can confessions or testimony obtained under duress be used in court proceedings?

Reply

17. The Libyan Penal Code is consistent with the provisions of article 7 of the International Covenant, since articles 428, 429, 430, 431, 433, 434 and 435 of Section II of Chapter IV entitled "Offences against personal liberty" prescribe the penalties to be imposed for the offences of abduction, the use of force or threats to coerce others, the abuse of authority against individuals, unlawful arrest, unjustified restriction of personal liberty and the torture of prisoners.

18. It should be noted that the Jamahiriya ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment under the terms of Act No. 7 of 1989 without any restriction or condition.

19. Article 15 of the Medical Ethics Act No. 17 of 1986 prohibits any tampering with the body of a live person or the removal of any organ or part thereof without the said person's written consent and without ascertaining that the said person will not be harmed thereby. This is in accordance with the provisions of Act No. 4 of 1982 concerning the permissibility of autopsies and the usefulness of the transplantation of organs from deceased persons.

20. It is prohibited to conduct scientific experiments on the body of a live person unless he consents thereto with a view to deriving benefit therefrom. In such a case, the experiments must be conducted by licensed medical practitioners in conformity with recognized scientific principles.

21. In accordance with Libyan jurisprudence and judicial practice, in order to be admissible as evidence on which reliance can be placed, a confession by an accused person must have been made of his own free will, which must not be vitiated or influenced by any form of pressure such as duress, torture or threats. If an accused person submits a plea to the effect that his confession should be deemed null and void on the ground that it was made under the influence of duress, threats or torture, this is a substantive plea which the competent court must consider and to which it must reply, regardless of

whether the plea was submitted by the accused person who made the confession or by another person accused in the case, if the court feels that a judgement convicting the accused must be based on that confession.

Question (d)

Please provide further information on arrangements for the supervision of places of detention and on procedures for receiving and investigating complaints.

Reply

22. The Prisons Act No. 47 of 1975 regulates the judicial supervision of prisons. Article 80 of that Act stipulates that, in conformity with the provisions of articles 32 and 33 of the Code of Criminal Procedure, the Attorney General and the members of the Department of Public Prosecutions have the right to enter any prison premises at any time for the following purposes:

(a) To ascertain that court judgements and decisions, as well as orders issued by examining magistrates and the Department of Public Prosecutions, are being duly implemented;

(b) To ensure that no person is being detained unlawfully;

(c) To ensure that the inmates are classified and treated in the legally prescribed manner;

(d) To inspect the statutory registers and files in order to ensure that they are in conformity with the prescribed models and are being used in a proper manner and duly kept up to date. They have the right to interview inmates and receive their complaints and, in general, to ensure that the provisions of the laws and regulations are being observed. They may take any action that they deem necessary in regard to any contraventions that occur and the prison governor must provide them with all the information that they require.

23. Article 32 of the Code of Criminal Procedure stipulates that: "All members of the Department of Public Prosecutions, as well as supervising magistrates and heads of courts of first instance and appeal courts, have a right to visit public prisons situated within their areas of jurisdiction in order to ensure that no prisoner is being detained unlawfully. They are entitled to inspect the prison registers and the arrest and detention warrants, of which they may also take copies. They have the right to contact any prisoner and listen to any complaint that he may wish to make. The governor and staff of the prison must provide them with every assistance in order to enable them to obtain the information that they require".

24. Article 33 of the Code of Criminal Procedure stipulates that: "Every prisoner has the right to submit a written or verbal complaint to the prison governor at any time and to request that it be transmitted to the Department of Public Prosecutions or the competent magistrate. The governor must accept it and transmit it immediately after entering it in a register that is maintained to that end in the prison. Anyone who comes to know that a person

is being detained unlawfully or in a place that is not intended to be used as a place of custody must notify the Department of Public Prosecutions or the competent magistrates who, on being so notified, must proceed immediately to the place in which the detainee is being held in order to investigate the matter. They must order the release of the detainee if he is being held unlawfully and must draw up a full report on the incident".

Question (e)

Are the United Nations Standard Minimum Rules for the Treatment of Prisoners complied with? How have these provisions been made known and accessible to the police, armed forces and prison personnel as well as to other persons responsible for holding interrogation?

Reply

25. The Prisons Act No. 47 of 1975 is consistent with the United Nations Standard Minimum Rules for the Treatment of Prisoners in regard to the admission, classification and treatment of prisoners, including female prisoners, as well as their compulsory work and remuneration, their education and medical and social welfare and their right to receive visits, to send and receive correspondence and to enjoy holidays. Accordingly, it can definitely be said that the Libyan Prisons Act complies with the United Nations Standard Minimum Rules for the Treatment of Prisoners. Instead of quoting the text of that Act article by article, which would be time-consuming, we have deemed it preferable to merely annex the text of the Act hereto*.

26. With regard to the manner in which the provisions of that Act are made known to the police, armed forces and prison personnel as well as to other persons responsible for holding interrogation, the Prisons Act forms part of the study curricula at the colleges and institutes in which members of the police and armed forces are trained. Consequently, these categories of personnel are familiar with the Prisons Act and the regulations promulgated thereunder.

Question (f)

Are the time-limits for remand in custody and pre-trial detention specified in paragraph 26 of the report consistent with the requirements of article 9, paragraph 3, of the Covenant?

Reply

27. Article 26 of the Code of Criminal Procedure stipulates that the criminal investigation officer must promptly listen to the statements of the arrested suspect and, if the latter is unable to establish his innocence, must send him within 48 hours to the competent Department of Public Prosecutions, which must question him within 24 hours and then order his release or remand in custody.

---

* Available for consultation with the Secretariat.

28. Article 112 of the Code of Criminal Procedure further stipulates that the examining magistrate must immediately question a suspect who is remanded in custody. If this proves to be impossible, the suspect must be confined in a prison until such time as he can be questioned. However, the period of such confinement must not exceed 24 hours, on the expiration of which the prison governor must deliver him to the Department of Public Prosecutions, which must immediately request that he be questioned by the examining magistrate. If necessary, it may request that he be questioned by a judge of summary jurisdiction, a president of a court or any other magistrate designated by the president of a court, failing which it must order his release.

29. Article 122 of the Code stipulates that: "A suspect may be held in pre-trial detention for a period of up to 15 days. However, after listening to the statements of the Department of Public Prosecutions and the suspect, the examining magistrate may order his further detention for a period or periods not exceeding a total of 45 days".

30. Article 123 of the Code of Criminal Procedure stipulates that: "If the examining magistrate deems it appropriate to extend the period of pre-trial detention beyond the time-limit specified in the preceding article, before the expiration of the said period he must submit the case file to a division of a court of first instance consisting of three judges so that it can issue an appropriate order after listening to the statements of the Department of Public Prosecutions and the suspect. The said division may extend the duration of detention for successive periods not exceeding a total of 45 days until the investigation has been completed".

31. Article 124 of the Code of Criminal Procedure stipulates that: "The examining magistrate who ordered the pre-trial detention may, of his own accord or at the suspect's request and after listening to the statements of the Department of Public Prosecutions, order the temporary release of the suspect at any time, provided that the latter undertakes to present himself on request and to refrain from any attempt to evade the enforcement of any judgement that may be handed down against him".

32. Article 126 of the same Code stipulates that: "Temporary release may be authorized in cases other than those in which the furnishing of bail is mandatory. The examining magistrate or the division referred to in article 123, as appropriate, shall set the amount of bail, a specified proportion of which shall be allocated as an adequate penalty for the suspect's failure to attend any of the investigation or court proceedings or for his failure to present himself in order to execute the judgement and discharge any other obligations imposed on him, the remaining proportion of the bail being allocated for settlement of the following amounts payable:

1. The advance costs paid by the civil claimant.

2. The costs incurred by the Government.

3. Any financial penalties that might be awarded against the defendant."

33. The above texts clearly show that the Code of Criminal Procedure is fully consistent with the requirements of article 9, paragraph 3, of the International Covenant on Civil and Political Rights.

Question (g)

How soon after arrest is a person's family informed and how soon after arrest can a person contact a lawyer?

Reply

34. Article 14 of the Promotion of Freedom Act No. 20 of 1991 stipulates that: "No one may be searched, interrogated or subjected to any deprivation or restriction of liberty except by order of a competent judicial authority and in the circumstances and for the periods prescribed by law if he is accused of committing a legally punishable act. Pre-trial detention may be ordered at a designated place, of which the suspect's relatives must be notified, for the shortest period of time needed for the investigation and the preservation of evidence".

35. Under Libyan legislation, an arrested suspect has a guaranteed right to contact a lawyer. Article 121 of the Code of Criminal Procedure stipulates that: "In cases which they are assigned to investigate, the Department of Public Prosecutions and the examining magistrate may issue instructions to the effect that a detainee must not be permitted to contact other prisoners or to receive visits, without prejudice to an accused person's right to contact his defence counsel, in private, at any time".

Question (h)

Please provide information on provisions relating to incommunicado detention.

Reply

36. Libyan legislation prescribes incommunicado detention for reasons relating to personal behaviour, such as moral turpitude, or the fear that a detainee might escape, cause a disturbance or assault others. Article 21 of the Implementing Regulations for the Prisons Act No. 47 of 1975 stipulates that: "Inmates with a reputation for moral turpitude or attempts to escape or a tendency to cause disturbances or bully others shall be isolated, each being confined in an individual cell wherever possible".

III. Right to a fair trial

Questions (a) and (b)

What guarantees are there for the independence and impartiality of the judiciary?

Please provide information on the legal and administrative provisions governing tenure, dismissal and disciplining of members of the judiciary.

Reply

37. Article 28 of the Constitutional Declaration promulgated on 15 December 1969 stipulated that: "Judges shall be independent and, in their administration of justice, shall be subject to no authority other than the law and their consciences". This was reaffirmed in the Promotion of Freedom Act No. 20 of 1991, article 31 of which stipulated that: "Judges shall be independent and, in their judgements, shall be subject to no authority other than the law".

38. In accordance with Principle 9 set forth in the Great Green Document on Human Rights in the Age of the Masses, which was promulgated on 29 November 1988, Jamahiri society guarantees the right of legal redress, as well as the independence of the judiciary and the right of every accused person to a fair and impartial trial.

39. Article 30 of the Promotion of Freedom Act reaffirmed the same principles set forth in the Great Green Document on Human Rights in the Age of the Masses by stipulating that everyone has the right to apply to the courts, in accordance with the law. The court must provide the person concerned with all the requisite safeguards, including a lawyer, and he has the right to avail himself of the services of a lawyer not chosen by the court provided that he bears the costs of the said lawyer's fees.

40. The guarantees for the independence of the judiciary include the existence of a special legislative enactment to regulate the judicial authority (the Organization of the Judiciary Act No. 51 of 1976). It can also be said that the guarantees for the independence and impartiality of the judiciary include the requirement that persons appointed as judges must meet the following conditions stipulated in article 43 of the Organization of the Judiciary Act No. 51 of 1976:

(a) He must hold the nationality of the Libyan Arab Republic and enjoy full legal capacity;

(b) He must hold a high qualification in Shari'a or secular law from a college in the Libyan Arab Republic or an equivalent foreign diploma subject to the requirement that, in the latter case, he must pass an examination set by the Minister of Justice if the diploma was issued by a non-Arab State;

(c) He must be of praiseworthy conduct and good reputation;

(d) He must not have been convicted of a dishonourable felony or misdemeanour, even if subsequently reinstated in his previous moral standing;

(e) He must not have been convicted of a dishonourable offence by a disciplinary tribunal;

(f) He must be in sound health and free from any disabilities that might prevent him from performing his duties in a proper manner. The standard of health shall be determined by decision of the Minister of Justice with the approval of the Higher Council of the Judiciary and shall be established by the stipulated medical examination;

(g) He must not be married to a non-Arab, although this requirement may be waived by decision of the Council of Ministers.

41. A further guarantee consists in the fact that judicial affairs are supervised by a Higher Council presided over by the Secretary for Justice and consisting of the President of the Supreme Court (as Vice-President), the Attorney-General, the most senior president of the appeal courts, the head of the Judicial Inspection Department, the head of the Legal Proceedings Department, the head of the People's Legal Counsel Department and the head of the Law Department. This Council is competent to consider candidacies for appointment to posts in the judiciary and the Department of Public Prosecutions, as well as the promotion, transfer, assignment and secondment of such personnel. It is also competent to institute disciplinary proceedings against members of the judiciary and to order the dismissal or retirement of members of the judiciary and the Department of Public Prosecutions or their transfer to non-judicial posts. It is empowered to take decisions on applications submitted by members of the judiciary and the Department of Public Prosecutions for the annulment of final administrative decisions concerning any matter relating to their functions, as well as disputes concerning salaries, pensions and emoluments due to judges and members of the Department of Public Prosecutions or their heirs. It also hears complaints and grievances lodged by judges and members of the Department of Public Prosecutions.

42. Another example of these legally stipulated guarantees for members of the judiciary can be found in the fact that judges and members of the Department of Public Prosecutions cannot be arrested or imprisoned, unless caught in flagrante delicto, without authorization from a committee consisting of a justice of the Supreme Court and two presidents or vice-presidents of appeal courts.

43. The justice to be appointed as a member of the committee is selected every year at a plenary session of the Supreme Court and the two other members are selected every year by decision of the Higher Council of the Judiciary, with the proviso that no member of the committee may simultaneously be a member of the Higher Council of the Judiciary.

44. Another guarantee can be found in the fact that no investigation proceedings can be instituted against a judge or a member of the Department of Public Prosecutions, nor may any criminal action be brought against them, for a felony or a misdemeanour unless authorized by the said committee on the basis of a request submitted by the Attorney General. Judges and members of the Department of Public Prosecutions against whom custodial sentences are handed down are detained in places separate from those intended for the detention of other prisoners.

45. By law, judges enjoy immunity in the sense that they cannot be removed from office. Article 52 of Act No. 51 of 1976 stipulates that judges cannot be removed from office or relieved of their duties, although judges initially appointed from outside the judiciary or the Department of Public Prosecutions do not enjoy this immunity until two years after the date of their

appointment, during which period they can be removed from office or relieved from their duties only with the approval of the Higher Council of the Judiciary for serious reasons relating to their conduct.

46. Yet another guarantee can be found in the fact that judges cannot be transferred from one court to another without the approval of the Higher Council of the Judiciary, which must specify the courts to which they are to be attached. The rules governing the designation of the places of assignment of judges, as well as the duration of their posting to those places and the regulations to be applied in regard to their transfer, are determined by decree, which must be approved by the Higher Council of the Judiciary, in such a way as to ensure their enjoyment of equal opportunities and safeguard the public interest.

47. Another guarantee consists in the fact that judges and members of the Department of Public Prosecutions can be assigned or seconded only to undertake judicial or legal work that is compatible with their official duties.

48. Another guarantee can be found in the establishment of the Judicial Inspection Department, which is competent to inspect the work of judges and members of the Department of Public Prosecutions up to the rank of associate justice or solicitor general. The inspection work in this Department is carried out by judges holding a rank not lower than that of president of a court and the rank of the head and deputy heads of the Department must not be lower than that of associate justice at an appeal court. Judges and members of the Department of Public Prosecutions are informed of everything that is placed in their service file by way of notes or papers concerning their official work or their conduct. Judges and members of the Department of Public Prosecutions are inspected once every year.

49. The legally stipulated guarantees for the independence and impartiality of the judiciary include a high salary, since judges and members of the Department of Public Prosecutions are appointed at higher occupational grades than similarly qualified law graduates appointed as justices in other bodies. Judges and members of the Department of Public Prosecutions are also paid a special bonus set at 45 per cent for judges and 35 per cent for members of the Department of Public Prosecutions and members of other judicial bodies.

50. The State undertakes to provide members of judicial bodies with the requisite facilities, consisting in a vehicle, the necessary protection and accommodation for those working in areas far from their places of residence.

51. The question of the resignation and separation from service of members of judicial bodies is governed by Act No. 51 of 1976, article 119 of which stipulates that judges and members of the Department of Public Prosecutions must be separated from service on reaching the age of 60 years, although their period of service may be extended for three further years beyond that age, with the approval of the administrative heads of the judicial bodies concerned, provided that they have a rare skill that their successors would be unlikely to possess. On reaching the age of 55 years, judges or members of the Department of Public Prosecutions can request retirement.

52. If a judge submits his resignation, it is deemed to be accepted, without looking into the reasons therefor, from the date of its submission. The same applies if a judge absents himself from his work, without permission, for 20 consecutive days even if this occurs immediately after the expiration of a period of leave, secondment or assignment to other duties. In such a case, if he subsequently presents himself for duty and excuses himself, the Secretary for Justice transmits his excuse to the Higher Council, which is empowered to regard the judge's resignation as null and void if his excuse is found to be valid.

Question (c)

Please provide information concerning the organization and functioning of the Bar in the Libyan Arab Jamahiriya.

Reply

53. The Bar Association is regulated by Act No. 82 of 1975 concerning the reorganization of the legal profession, article 79 of which stipulates that lawyers shall have an association endowed with corporate personality and administered by a Council elected by its General Assembly. The Act further stipulates that this Association shall be based in the city of Tripoli but shall be entitled to establish branches elsewhere. Its headquarters and branches enjoy the immunity accorded to the offices of lawyers and its President represents the Association vis-à-vis internal and external bodies. Article 81 of the said Act defines the Association's objectives as follows:

(a) To protect the Association's interests, safeguard the traditions of the profession and ensure that lawyers are free to perform their functions;

(b) To mobilize the forces of the Association's members with a view to furthering their endeavours to develop legal concepts and enhancing their awareness of firmly-established legitimate principles of justice in order to ensure the rule of law and facilitate access to justice without material obstacles or administrative complications;

(c) To promote academic legal research in every possible way;

(d) To organize the exercise of the profession on a cooperative basis;

(e) To hold symposia and conferences with a view to consolidating links of cooperation and fraternity among lawyers.

Question (d)

Please provide detailed information on the operation of the legal aid system.

Reply

54. Articles 152, 153, 154, 155, 156, 157 and 158 of the Organization of the Judiciary Act No. 51 of 1976 regulate legal aid by stipulating that it should be available to plaintiffs or defendants who are unable to bear the costs of

any type of legal proceedings, including civil proceedings brought during the course of criminal proceedings. Legal aid is granted only in the event of inability to bear the costs of proceedings that are likely to be successful. If an application for legal aid is accepted, a lawyer is appointed to defend the applicant. The granting of such aid entails the following consequences:

(a) Exemption from fees in respect of the legal and administrative proceedings required for the settlement of the matter at issue, while retaining the right to claim these costs from the adversary against whom they are awarded;

(b) Defence, free of charge, in connection with the case and the matter in which such aid is granted, while reserving the lawyer's right to claim the expenses and fees to which he is entitled from the adversary against whom they are awarded;

(c) The fees payable are debited against the Public Treasury;

(d) The Public Treasury pays a travel and accommodation allowance to members of the judiciary, officials, criminal investigation officers and, if necessary, the lawyer appointed to provide legal aid. It also pays the cost of any testimony that might be required from experts and witnesses;

(e) Any legal notices concerning the matter at issue that need to appear in specialized newspapers are printed therein free of charge.

55. Applications for such aid must be submitted to the clerk of the competent court.

IV. Non-discrimination, equality of the sexes, freedom of religion, expression, assembly and association, political rights and rights of persons belonging to minorities

Question (a)

Please provide information on laws as well as the relevant practices giving effect to the provisions of article 2 (1) and 26 of the Covenant. Have there been any cases of discrimination against non-Muslim believers and, if so, what measures have been taken to prevent the recurrence of such acts and to provide remedies to the victims?

Reply

56. All male and female persons in the Jamahiriya are equal before the law and are entitled without any discrimination to the equal protection of the law. There is no discrimination among them on any ground such as race, colour, sex, language, religion, political opinion, national or social origin, property, birth or other status. Article 1 of the Promotion of Freedom Act No. 20 of 1991 stipulates that all male and female citizens of the Jamahiriya are free and equal in regard to their rights, which are inviolable. Article 5 of the Constitutional Declaration likewise stipulates that all citizens are equal before the law.

57. In accordance with Principle 21 of the Great Green Document on Human Rights in the Age of the Masses, all male and female members of Jamahiri society are equal in all human respects and discrimination between men and women is a flagrant injustice that cannot be justified.

58. In the Libyan Arab Jamahiriya, there are no cases of discrimination against non-Muslims, since all Libyan legislative enactments guarantee freedom of religion. For example, article 2 of the Constitutional Declaration stipulates that the State shall protect freedom of religious observance in accordance with prevailing customs.

59. Principle 10 of the Great Green Document on Human Rights in the Age of the Masses stipulates that religion, being an absolute faith in the transcendental, as well as a sacred spiritual value for every individual and for people in general, constitutes a direct relationship with the Creator, without any intermediary. The society of the Jamahiriya prohibits monopolization and exploitation of religion to stir up sedition, fanaticism, sectarianism, factionalism and conflict.

60. Article 5 of the Promotion of Freedom Act No. 20 of 1991 stipulates that religion is a direct relationship with the Creator, without intermediary, and it is prohibited to claim a monopoly of religion or to exploit it for any purpose.

61. The above texts clearly show that the Constitutional Declaration, the Promotion of Freedom Act and the Great Green Document on Human Rights in the Age of the Masses are consistent with the letter and the spirit of articles 2 and 26 of the International Covenant on Civil and Political Rights.

Question (b)

What are the practical consequences of article 2 of the Constitution proclaiming Islam the religion of the State? How is reconciliation achieved with article 18 of the Covenant and the Committee's General Comment No. 22 (48)?

Reply

62. The Constitutional Declaration designates Islam as the religion of the State. This means that the public authorities cannot promulgate legislation that is inconsistent with Islam, since the Islamic religion forms part of the social order. However, no one is forced to embrace the Islamic religion, since there is no compulsion in religion, in which right guidance is distinct from error. If a non-Muslim embraces the Islamic religion, he is treated in the same way as Muslims in regard to marriage, inheritance and other matters pertaining to religion.

63. If a Muslim embraces another religion, he is answerable before the law for committing a breach of public order.

Question (c)

Please provide further information, including relevant statistical data, concerning the participation of women in the political and economic life of the country.

Reply

64. There is no discrimination between men and women, since both have equal rights and obligations. Act No. 15 of 1981, concerning the wage structure, establishes the principle of equal remuneration for equal work and responsibilities within the framework of the satisfaction of basic needs, without any discrimination on grounds of sex.

65. Education is a right and a duty of all Libyans, whether male or female. It is compulsory to the end of the basic stage of education and free at all stages. Men and women are treated on an equal footing in Libyan society, in which they are partners in the various employment sectors and also in the fulfilment of public duties, such as national defence. Women work as teachers, physicians, lecturers, judges, lawyers, engineers and police officers and also participate in political activities. They have served as Ministers and have held ambassadorial posts in the Diplomatic Service.

66. The Basic People's Congresses have women members, who have the right to stand for election to posts in the same way as men. They also have the right to participate in trade unions and professional federations and associations.

Question (d)

What are the legal and practical effects of the condemnation of "monopolization and exploitation of religion to stir up sedition, fanaticism, sectarianism, factionalism and conflict" by the Jamahiri society?

Reply

67. Libyan legislation prohibits monopolization or exploitation of religion to stir up sedition, fanaticism, sectarianism, factionalism and conflict. Article 289 of the Libyan Penal Code prescribes a penalty of up to one year's imprisonment or a fine of up to 50 pounds for anyone who disrupts or impedes, by violence or threats, the holding of public religious observances or any private religious ceremony. The same penalties apply to anyone who damages, breaks, destroys or desecrates premises intended for the holding of religious observances or other objects venerated by the members of a religious community or population group. Article 290 of the same Code stipulates that the penalties prescribed in the preceding article are also applicable to anyone who openly attacks a religion the observances of which are held in public. The provisions of this article apply to:

(a) The printing or publication of a book that is sacred in the eyes of the adherents of a religion, the observances of which are held in public, in such a way as to deliberately distort and alter the meaning of the text of the said book;

(b) Mimicry of a religious ceremony or rite in a public place with a view to ridiculing it or entertaining onlookers.

Question (e)

Please provide information on the law and practice relating to the employment of minors.

Reply

68. The employment of minors is regulated by the Labour Act No. 58 of 1970, as amended. Article 92 of the said Act prohibits the employment of young persons, who are not even permitted to enter places of work if they are under 15 years of age. The Minister of Labour and Social Affairs issues directives specifying the terms and conditions under which young persons under 18 years of age may be employed in some industries and occupations. These directives also specify the industries and occupations in which it is prohibited to employ young persons under that age. The age of a young person is determined in the light of a birth certificate or any other official document, failing which it must be assessed by a government physician.

69. Article 93 prohibits the employment of young persons for more than six hours per day, which must be interspersed with one or more rest periods. The total duration of meal times must not be less than one hour. Work and rest periods must be planned in such a way as to ensure that young persons do not actually work for more than four consecutive hours or remain in the place of work for more than nine hours per day.

70. Article 94 of the same Act prohibits the employment of young persons from 8 p.m. to 7 a.m. It also prohibits their employment on overtime and the cumulation of the official weekly rest or holiday periods to which they are entitled.

71. Article 83 of the Labour Act stipulates that anyone employing one or more young persons has the following obligations:

(a) He must display, at the place of work, a copy of the regulations concerning the employment of young persons;

(b) He must draw up a list containing the names, ages and dates of engagement of the young persons employed by him;

(c) He must display, at a prominent location in the place of work, a schedule showing their working hours and rest periods.

Question (f)

Please provide information concerning the law and practice relating to permissible interference with the right to privacy.

Reply

72. Libyan legislation prohibits interference in the private lives of individuals, except in a limited number of clearly specified cases, in order to protect individuals from others. Article 16 of the Promotion of Freedom Act No. 20 of 1991 stipulates that privacy is inviolable and must not be interfered with unless it poses a threat to public order or public morals, causes harm to others or gives rise to a complaint by any of the parties concerned.

73. Article 19 of the same Act stipulates that homes are inviolable and must not be entered, placed under surveillance or searched unless they are used to conceal a crime, harbour criminals or inflict moral or material harm on others or for purposes that are manifestly incompatible with social morality and traditions. Except in cases of flagrante delicto or requests for assistance, homes cannot be entered without the permission of a legally competent body.

74. Article 15 of the Promotion of Freedom Act guarantees the confidentiality of correspondence, which cannot be censored except in a limited number of cases in which such is necessitated by the exigencies of public security and after obtaining permission from a judicial body.

75. Article 22 of the Constitutional Declaration stipulates that homes are inviolable and must not be entered or searched except in the circumstances and the manner prescribed by law.

76. Principle 7 of the Great Green Document on Human Rights in the Age of the Masses stipulates that the numbers of Jamahiri society are free in respect of their personal conduct and relationships, to the extent that no one may interfere in them unless a complaint is made by a party to the relationship or if the conduct or relationship harms or undermines society or is incompatible with its values.

Question (q)

What controls are exercised on the freedom of the press and mass media in accordance with the law?

Reply

77. Article 1 of the Publications Act No. 76 of 1972 stipulates that the press and publication are free and everyone has the right to express his opinion and to disseminate views and news by various means in accordance with the constitutional right regulated by this Act and within the framework of the principles, values and objectives of society.

78. Article 2 of this Act stipulates that it is not permissible to impose censorship on newspapers before their publication.

79. Article 28 of the Publications Act stipulates that every foreign publication must be submitted to the Publications Department before its distribution and the Director of the Publications Department has the right to prohibit the distribution of any edition of any foreign publication if its

content is found to be prejudicial to national or Arab unity or religious beliefs, incompatible with the principles and objectives of the Revolution or public morals, detrimental to public security or fallacious to such an extent as to confuse public opinion.

Question (h)

What are the restrictions on the exercise of the freedom of expression as guaranteed by article 19 of the Covenant?

Reply

80. The Constitutional Declaration guarantees the right of citizens to freedom of opinion within the limits permitted by the public interest and the principles of the Revolution, since article 13 stipulates that freedom of opinion is guaranteed within the limits permitted by the interests of the people and the principles of the Revolution.

81. Article 8 of the Promotion of Freedom Act No. 20 of 1991 stipulates that every citizen has the right to express his opinions and ideas and proclaim them publicly at the People's Congresses and through the information media of the Jamahiriya. No citizen is answerable for his exercise of this right unless he exploits it in order to detract from the people's authority or for personal ends. It is prohibited to promote ideology or opinions in a clandestine manner or to attempt to disseminate them or impose them on others through incitement, force, intimidation or fraud.

Question (i)

Please elaborate on the provisions of the law referred to in paragraph 45 of the report in relation with article 20 of the Covenant.

Reply

82. Libyan legislation prohibits any propaganda for war and any advocacy of national, racial or religious hatred. It also prohibits racial prejudice, antagonism and violence. Principle 16 of the Great Green Document on Human Rights in the Age of the Masses stipulates that Libyan society is a society of virtue and exalted values which holds human standards and values sacred and aspires to a human society without aggression, without wars, without exploitation and without terrorism, a society in which no one is regarded as being great or unimportant. All nations, peoples and ethnic groups have a right to live in freedom according to their choice and likewise have a right to determine their own future and establish their national identity. Minorities are entitled to protection for their members and their heritage and their legitimate aspirations must not be suppressed, nor must force be used to merge them in any other ethnic group.

Question (j)

Please provide information on the law and practice concerning public meetings.

Reply

83. Public meetings and demonstrations in the Jamahiriya are regulated by the Act promulgated on 30 October 1965, article 1 of which stipulates that individuals are entitled to assemble in a calm and peaceful manner and no police officer has the right to attend such gatherings, nor is there any need for the participants to notify him thereof. Public meetings are permitted within the limits of the regulations and provisions contained in that Act.

84. For the purposes of the application of the provisions of the Act, a public meeting is deemed to be any meeting held to discuss a public matter and in which anyone can participate without authorization or a personal invitation, regardless of whether the meeting is held in a public or private place.

85. Article 2 of the same Act stipulates that anyone wishing to organize a public meeting must notify the local authorities in writing at least 48 hours before the meeting is to be held.

86. Article 4 stipulates that the public authorities cannot prohibit a public meeting unless it is likely to disrupt security or public order. The prohibition order must be notified to one or more of the organizers of the meeting at his chosen place of domicile as soon as possible but not less than 12 hours before the time at which the meeting is scheduled to take place.

87. The organizers of the meeting may lodge a protest against the prohibition order with the Minister of the Interior. Electoral meetings cannot be prohibited under any circumstances.

Question (k)

Please provide information on the existence and functioning of associations and trade unions in the Libyan Arab Jamahiriya.

Reply

88. Article 1 of the Associations Act No. 111 of 1970 stipulates that, for the purposes of the application of the provisions of the Act, an association is deemed to be any grouping consisting of a number of persons that is established for a specified or unlimited period of time for a purpose other than the acquisition of material profit. The Act regulates the governing bodies and the general assembly of such associations, defines their terms of reference and specifies the body under whose supervision they are to be placed, as well as the manner in which they can be dissolved.

89. Article 9 of the Promotion of Freedom Act further stipulates that citizens are free to establish and join trade unions, professional and social federations and groupings and charitable societies to protect their interests or achieve the legitimate objectives for which they are established.

90. The Labour Act No. 58 of 1970 regulates the activities of trade unions and article 115 thereof stipulates that persons working in the same occupation or industry or in similar or interlinked occupations or industries or engaged in the same type of production activity are entitled to form a trade union to enhance their productive capabilities, make them aware of their obligations, protect their interests, defend their rights and endeavour to improve their material, social and cultural situation.

91. The Trade Unions Act No. 107 of 1975 stipulates that trade-union organizations should seek to achieve the following aims:

(a) To disseminate trade-union awareness and develop their union membership in such a way as to reinvigorate the trade-union movement;

(b) To raise the educational standard of workers through training and educational courses, publications and information in such a way as to ensure the establishment of an enlightened grass-roots base and a well-trained leadership;

(c) To enhance the occupational competence of workers, improve their technical standard, encourage competitivity in production and promote a spirit of initiative among workers;

(d) To contribute to the social and industrial development of society and participate in the drafting and adoption of economic and production development plans;

(e) To safeguard the legally recognized rights and freedoms of members, defend their interests and improve their terms of employment in order to promote social justice and equality of opportunity among citizens;

(f) To raise the health, social and economic standards of members and their families through the provision of health care services, cooperative consumption and housing services and the organization of holidays and leisure time;

(g) To support the International Confederation of Arab Trade Unions in its capacity as the representative of Arab workers' unity;

(h) To consolidate and develop links and relations with international trade-union organizations.

Question (1)

Please clarify the statement in paragraph 56 of the report that there are no ethnic minorities in the Libyan Arab Jamahiriya. What measures have been taken to guarantee the rights of persons belonging to religious or linguistic minorities under article 27 of the Covenant?

Reply

92. The citizens of the Jamahiriya belong to a single race (the Arab race), speak a single language (the Arabic language) and follow a single religion (the Islamic religion). There are no religious or ethnic communities based on religious confession, race, colour, descent or political affiliation in a single society all members of which are homogeneous and equal and in which a spirit of social solidarity, love and friendship prevails.

Part Two

QUESTIONS POSED BY THE COMMITTEE DURING CONSIDERATION OF THE SECOND PERIODIC REPORT

Question 1

What are the reasons for the delay in the submission of the second periodic report?

Reply

93. The delay in the submission of the second periodic report is attributable to lack of experience in regard to the manner in which such reports should be prepared, as well as the large area of the country and the manifold nature of its administrative agencies, which makes the gathering of information and statistics a time-consuming process. Libya was also busily engaged in the phase of administrative transformation and restructuring, development, transition from the traditional system to the Jamahiri system and the application of direct democracy in accordance with the Third Universal Theory.

Question 2

How is the political authority organized?

Reply

94. When the Declaration Establishing the People's Authority was promulgated on 2 March 1977, the Constitutional Declaration was amended and the direct authority of the people became the basis of political authority through the People's Congresses, which exercise political authority in the manner regulated by Act No. 9 of 1984 and Act No. 2 of 1994.

Question 3

How is the legislative authority constituted?

Reply

95. The People's Congresses are the legislative authority to which bills of law are submitted, for consideration, discussion and decision-making, by the People's Committees, in their capacity as the executive authority, and also by the competent technical bodies. These bills of law are then submitted to technical committees which scrutinize and reformulate them, taking into

consideration all the comments made by the People's Congresses, in order to ensure that the legislation achieves the objective for which it is to be promulgated. The bills of law are then submitted to the General People's Congress for finalization and promulgation.

Question 4

What difficulties is the country encountering in its implementation of the articles of the Covenant?

Reply

96. As already stated in the second report, Libyan legislation is consistent with the letter and the spirit of the articles of the Covenant and it can therefore be said that the country is not encountering any noteworthy difficulties in its implementation of the articles of the Covenant.

Question 5

Are alcoholics liable to the death penalty?

Reply

97. The provisions of Libyan legislation concerning the prohibition of alcohol and the penalty for its consumption are derived from the Islamic Shari'a. Article 1 of Act No. 89 of 1974 stipulates that it is prohibited to drink, imbibe, possess, acquire, deal in, serve, offer or give alcohol as a gift. Article 5 of that Act prescribes a penalty of 40 lashes for the drinking of alcohol. However, in order to be liable for this penalty, the offender must be Muslim, of sound mind and over 18 years of age and must have committed the offence deliberately, wittingly and of his own free will without any coercion or legally valid excuse.

98. Non-Muslims are not punished for drinking alcohol unless they do so in a public place or an establishment that is open to the public or are found to be in an evident state of inebriety in a public place or establishment, in which case they are liable to a penalty of imprisonment for a term of not less than three months and not more than one year or a fine of not less than 50 and not more than 100 dinars.

99. Article 14 of the Act stipulates that, if convicted under the terms of a final judgement, the offender forfeits the following rights and privileges:

(a) Eligibility to assume or retain any senior or high-level official post;

(b) The right to stand for election to any parliamentary body;

(c) His testimony is not admissible as legal evidence if, before pronouncing judgement, the court finds that he has been convicted, under the terms of a final judgement, of any of the offences specified in the Act;

(d) He cannot be given a certificate of good conduct and behaviour;

(e) The offender cannot be issued with a licence to drive motor vehicles and any licence that has been issued to him must be withdrawn. This penalty applies only for a period of one year from the date on which the judgement becomes final, without prejudice to any heavier penalty prescribed in other legislation. If an offender is convicted on more than two occasions of any of the offences specified in the Act, he permanently forfeits the right to hold a licence to drive motor vehicles.

100. The penalties prescribed in paragraphs (a)-(d) above cease to apply if the offender establishes his penitence. He is deemed to be penitent if he has been reinstated in his former good standing in accordance with the Code of Criminal Procedure.

101. The above texts clearly show that alcoholics are not liable to the death penalty under Libyan law.

Question 6

Why are the hands of thieves amputated?

Reply

102. Libya has adopted the Holy Qur'an as its social code. The penalty for theft, as prescribed in the Holy Qur'an, is amputation of the hand from the wrist. This penalty is not found only in the Holy Qur'an; it was known to the Arabs before Islam and is also prescribed in other divinely revealed religious laws. Corporal punishments, such as flogging, branding and death, were also provided for in the laws of many countries of the world.

Question 7

How is the penalty of flogging for fornication carried out?

Reply

103. Article 7 of Act No. 7 of 1973 concerning imposition of the penalty for fornication defines the manner in which this penalty must be carried out. It stipulates that the penalty of flogging for fornication cannot be carried out until the judgement has become final and the person sentenced thereto has been medically examined in order to ascertain that execution of the penalty would not endanger his or her life. The penalty is carried out at a police station in the presence of a member of the Department of Public Prosecutions and a competent physician. The flogging is suspended whenever it is found to be endangering the life of the convicted person but must be resumed at another time. The sentence is carried out using a medium-size leather whip with a single unknotted lash. The convicted person is stripped of any clothes that would prevent pain from reaching the skin and is beaten in a moderate and unprotracted manner, the blows being distributed over his body and care being taken to avoid places where they might be dangerous. Women are flogged in a sitting position with the body covered, the blows being distributed over their

back and shoulders. In the case of pregnant women, the penalty of flogging is postponed until two months after they have given birth. The penalty can be carried out only in the presence of a group of Muslims in order to ensure that it has a public deterrent effect.

Question 8

What is the situation in the event of conflict between the Covenant and the Qur'an?

Reply

104. For the Libyan Arab people, the Holy Qur'an constitutes the basic law and, consequently, no derogation from its provisions is permissable for any reason whatsoever since it is closely linked to religious faith. However, it can be said that the objectives of the Covenant in regard to freedoms, rights and the protection of human dignity are the same as those that the Qur'an has been advocating for 14 centuries.

Question 9

What powers are vested in the Revolutionary Committees?

Reply

105. The revolutionary committees do not exercise legislative, executive or judicial authority. They consist merely of groups of people who have jointly established these committees for the purpose of encouraging the masses to exercise authority. In the eyes of the law, none of the members of this movement are regarded as public officials and they do not receive any salaries or other benefits in respect of the work that they undertake.

Question 10

Are there any extrajudicial executions?

Reply

106. Under Libyan law, every accused person has a guaranteed right to a defence and a fair trial before a court consisting of three judges. Article 4 of the Organization of the Judiciary Act No. 51 of 1976 stipulates that every appeal court must comprise one or more divisions, each consisting of three justices, to hear criminal cases.

107. A criminal court sits in every town in which there is a court of first instance and its area of jurisdiction corresponds with that of the court of first instance. The criminal court may sit at any other place within its area of jurisdiction, by decision of the Minister of Justice, at the request of the president of the appeal court.

108. By law, defence counsels and judges enjoy guarantees consisting in a high salary and immunity from dismissal, detention and other custodial measures so that they can hand down equitable judgements. One of these guarantees consists in the fact that accused persons and the Department of Public Prosecutions have the right to lodge appeals against judgements with a higher judicial body. Accordingly, it can be said that Libyan law prohibits executions without a fair trial.

Question 11

Does a citizen have the right to conscientious objection?

Reply

109. Article 4 of the Declaration Establishing the People's Authority promulgated on 2 March 1977 stipulates that every male and female citizen has a responsibility to defend the country and, to this end, the people must be armed and provided with general military training. The law makes provision for the training of senior military personnel, as well as general military training. Pursuant to the above stipulation, article 1 of the National Service Act No. 9 of 1987 makes national service compulsory for every citizen between 18 and 35 years of age who is medically fit therefor. Performance of this service may also be required from persons over 35 years of age, by order of the Commander-in-Chief, in the event of war, mobilization, emergency or actual military operations.

110. In addition to the above, article 3 of the Promotion of Freedom Act No. 20 of 1991 stipulates that defence of the country is a right and an honour from which no male or female citizen may be deprived. Principle 25 of the Great Green Document on Human Rights in the Age of the Masses further stipulates that the members of the society of the Jamahiriya consider collective defence to be a way of protecting the country, the defence of which is the responsibility of every male and female Libyan citizen. The obligation to die for one's country, if necessary, cannot be delegated. Accordingly conscientious objection is not legally admissible in the case of a citizen who meets the requirements for the performance of national service.

Question 12

What is imprisonment designed to achieve?

Reply

111. This question is answered in article 1 of the Prisons Act No. 45 of 1975, which stipulates that: "Prisons are places of reform and education. Their purpose is to rectify the conduct of criminals sentenced to custodial penalties with a view to their rehabilitation so that they can become upstanding members of society". This is in keeping with the aims advocated by the social defence organizations.

Question 13

What degrees of precedence are assigned to the Constitution, the Great Green Document on Human Rights and the Islamic religion?

Reply

112. The Constitutional Declaration, as amended by the Declaration Establishing the People's Authority, is regarded as the basic law. Any legislation incorporating a legal principle that is at variance with the text of the Constitutional Declaration and the Declaration Establishing the People's Authority is deemed to be null and void in accordance with the rule of legal precedence. A lesser law cannot prevail over a higher law and the courts must refrain from applying lower-ranking legislation if it is at variance with higher-ranking legislation.

113. With regard to the Great Green Document on Human Rights, as already stated in our reply to question I (c), that Document contains a set of legal principles that should serve as guidelines during any review of legislation. That Document lacked legal force until the promulgation of Act No. 5 of 1991, concerning the application of the principles of the Great Green Document, article 1 of which stipulated that: "The legislation in force prior to the promulgation of the Green Document shall be amended to make it consistent with the principles set forth in that Document. It shall not be permissible to promulgate legislation that is incompatible with those principles". Accordingly, it can be said that the Great Green Document has legal force in regard to legislation promulgated subsequent or prior to Act No. 5 of 1991.

114. The Islamic religion is regarded as a source of legislation in accordance with the Civil Code, article 1, paragraph 2, of which stipulates that, in the absence of an applicable legislative provision, the judge must rule in accordance with the Islamic Shari'a. If no relevant provisions are found in the latter, he must rule in accordance with custom and usage. If no relevant provisions are found therein, he must rule in accordance with natural law and the principles of equity.

115. Furthermore, article 2 of the Declaration Establishing the People's Authority stipulates that the Holy Qur'an constitutes the social code in the Jamahiriya in the sense that the Holy Qur'an and the Islamic Shari'a constitute two sources of legislation in the Jamahiriya.

Question 14

Does a person have the right to change his religion?

Reply

116. This question has already been answered in our reply to question IV (b).

Question 15

Are there any agreements concerning the expulsion of foreigners?

Reply

117. The circumstances in which a foreigner may be expelled from the country following the withdrawal of his residence permit are specified in articles 16 and 17 of Act No. 6 of 1987 concerning the entry and residence of foreigners in Libya and their departure therefrom. Article 16 of that Act stipulates as follows:

"The residence permit issued to a foreigner may be withdrawn, at any time, in the following circumstances:

(a) If his presence threatens the internal or external security or integrity of the State, its economy, public health or public morals or if he is a burden on the State;

(b) If he is convicted of a felony or a misdemeanour prejudicial to honour, trustworthiness or public security;

(c) If he violates the conditions imposed on him at the time of issue of the permit;

(d) If the reason for which the permit was issued to him no longer applies;

(e) The permit may be withdrawn, regardless of its period of validity, by order of the Director-General of Passports and Nationality."

118. Article 17 stipulates as follows:

"A foreigner may be expelled in the following circumstances:

(a) If he entered the country without a valid visa;

(b) If he refuses to leave the country on the expiration of his residence permit which the competent authority has refused to extend;

(c) If his residence permit is withdrawn for any of the reasons specified in article 16 of this Act;

(d) If a court of law orders his expulsion.

In the cases referred to in (a), (b) and (c) above, expulsion shall be effected on the basis of a substantiated decision by the Director-General of Passports and Nationality."

Question 16

How is authority exercised, given the fact that there is no parliament or legislative assembly?

Reply

119. In accordance with the Declaration Establishing the People's Authority, authority in the Jamahiriya is exercised on the following basis:

120. Legislative authority in the country is exercised by Basic People's Congresses, while executive authority is exercised by People's Committees. There is also a judicial authority. Each of these authorities is independent and regulated by law. The Basic People's Congresses are regulated by Act No. 2 of 1994, while the People's Committees are regulated by Act No. 3 of 1994 and the judicial authority is regulated by the Organization of the Judiciary Act No. 51 of 1976.

121. The legislative authority, consisting in the Basic People's Congresses, considers bills of law submitted by the executive authority and is also empowered to raise any matters that it feels should be discussed, after which the decisions that it takes thereon are submitted to the General People's Congress for drafting and promulgation in the form of a law or decree.

122. The executive authority, consisting in the People's Committees, is responsible for the implementation of the laws or decrees promulgated by the General People's Congresses.

123. The judicial authority, which is independent, issues rulings in cases submitted to it in accordance with the provisions of the laws and legislation in force.

124. From the above, it is evident that Libya has a legislative authority, consisting in the Basic People's Congresses and the General People's Congress, as well as an executive authority consisting in the People's Committees ranging from the General People's Committee to the People's Committee of the Basic People's Congress.

Question 17

Are there any non-governmental organizations concerned with human rights and are they able to obtain and publish information?

Reply

125. The Libyan Arab Jamahiriya has only one non-governmental organization concerned with human rights, namely the Libyan Arab Committee on Human Rights in the Age of the Masses, which was established in 1989 to propagate and defend human rights and promote stronger belief therein. It is doing its utmost to monitor human rights issues through the dissemination of information and the receipt of complaints and reports from the persons concerned or from other human rights organizations.

Question 18

Has this report been published in the press and information media?

Reply

126. The report, as such, has not yet been published in the information media, although all laws and legislative provisions, including those embodied in the International Covenant and referred to in this report, are available to the public and are published in the Official Gazette, the press and other information media.

Question 19

Is there any separation of authority?

Reply

127. The principle of separation of authority is observed in the Jamahiriya where the legislative authority is totally independent of the executive and judicial authorities. Article 28 of the Constitutional Declaration stipulates that judges are independent and, in their administration of justice, are subject to no authority other than the law and their consciences. Article 4 of Act No. 2 of 1994, which regulates the People's Congresses, stipulates that the People's Congresses, being the sole instrument for the exercise of legislative authority in the country, are empowered to take all decisions governing public life. In particular, they are empowered to take decisions concerning the following:

(a) Adoption of legislation in various fields;

(b) Drafting and adoption of the Economic Plan and the public budgets;

(c) Ratification of treaties and agreements concluded between the Jamahiriya and other States;

(d) Definition of the Jamahiriya's relations with other States;

(e) Formulation of public policies;

(f) Decisions concerning matters of war and peace;

(g) Selection and accountability of their secretariats and People's Committees.

128. Article 1 of the People's Committees Act No. 3 of 1994 stipulates that the People's Committees constitute the instrument for the implementation of the decisions of the Basic People's Congresses. Article 3 of the Declaration Establishing the People's Authority promulgated in March 1997 stipulates that the Libyan people shall exercise its authority through the People's Congresses, the People's Committees, trade unions and occupational federations and associations and the General People's Congress in accordance with legally specified working procedures.

129. A study of these texts clearly shows that the principle of the separation of authority is observed in the Jamahiriya where the Basic People's Congresses exercise sovereign and legislative authority and formulate the public policy of the State in various fields.

130. Executive authority is exercised by the People's Committees, which are chosen directly by the People's Congresses. Judicial authority, which is fully independent of the legislative and executive authorities, is exercised by the various levels and types of courts in accordance with the provisions of the Organization of the Judiciary Act No. 51 of 1976 and the Supreme Court Act No. 6 of 1982. The working procedures of the courts are also regulated by law.

Question 20

Why is it that Libya, although a petroleum-producing country, is not wealthy?

Reply

131. Before the discovery of petroleum, Libya was a poor country. Since that time, the country has been endeavouring to develop the infrastructure that was lacking in the principal towns, as well as the villages and rural areas. To that end, the country's income has had to be spent on various housing, agricultural and industrial projects, as well as projects for the construction of roads and air and seaports, the establishment of electricity and telecommunications networks, the development of the armed forces, the construction of schools, universities and hospitals and the piping of water to various areas, including the Great Man-Made River Project, which has cost vast sums of money, in addition to the establishment of new towns and other projects included in the First and Second Five-Year Development Plans.

Question 21

What is the practical value of the Promotion of Freedom Act of 1991?

Reply

132. Article 35 of the Promotion of Freedom Act of 1991 stipulates that: "The provisions of this Act are basic and it shall not be permissible to promulgate any legislation that conflicts therewith. Any legislation that is incompatible therewith shall be amended". Consequently, any interested person is entitled to lodge a complaint with the Supreme Court against any legislation that is contrary to the Promotion of Freedom Act.

Question 22

What methods have been devised to incorporate the articles of the Covenant in national law?

Reply

133. As already indicated, the legislation in force in the Jamahiriya is, on the whole, consistent with the provisions of the Covenant. Consequently, there is no need to make any amendments to the existing Libyan legislation.

Question 23

What degrees of precedence are assigned to Libya's laws?

Reply

134. The Constitutional Declaration, the Declaration Establishing the People's Authority which amended it, and the Promotion of Freedom Act, being basic laws, have the same legal force. The ordinary laws, followed by regulations and ordinances, have lower status. International conventions to which Libya accedes are regarded as forming part of its domestic law as soon as the legally stipulated procedures for their ratification have been completed.

Legislative enactments annexed to the report*

1. The Constitutional Declaration.

2. The Promotion of Freedom Act No. 20 of 1991.

3. The People's Congresses Regulatory Act No. 2 of 1994.

4. The People's Committees Act No. 3 of 1994.

5. Act No. 5 of 1991, concerning the application of the principles of the Great Green Document on Human Rights in the Age of the Masses.

6. The Trade Unions Act No. 107 of 1975.

7. Act No. 6 of 1987, regulating the entry and residence of foreigners in Libya and their departure therefrom.

8. The National Service Act No. 9 of 1987.

9. Act No. 10 of 1992 promulgating the Security and Police Act.

10. The Prisons Act No. 47 of 1975.

11. The Publications Act No. 76 of 1972.

12. Act No. 51 of 1976 promulgating the Organization of the Judiciary Act.

13. The Associations Act No. 111 of 1970.

---

* Available for consultation with the Secretariat.

14. The Labour Act No. 58 of 1970, as amended.

15. Act No. 82 of 1975, concerning the reorganization of the legal profession.

16. Act No. 89 of 1974 prohibiting the drinking of alcohol.

17. Act No. 70 of 1973 concerning the application of the penalty for fornication.

18. The Libyan Penal Code of 1956.

19. The Public Gatherings and Demonstrations Regulatory Act of 1956.

20. The Great Green Document on Human Rights in the Age of the Masses.

21. The Implementing Regulations for the Prisons Act of 1982.